

June 18, 2008

IMMEDIATE RELEASE

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OF THE COURT, BUT IS SOLELY FOR
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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	
)	
v.)	Docket No. 28589
)	
DARRELL EDWARD PAYNE,)	
)	
Defendant-Appellant.)	Boise, February 2008
)	
)	2008 Opinion No. 86
)	
DARRELL EDWARD PAYNE,)	Filed: June 18, 2008
)	
Petitioner-Appellant-Cross Respondent,)	Stephen W. Kenyon, Clerk
)	
v.)	
)	
STATE OF IDAHO,)	Docket No. 32389
)	
Respondent-Cross Appellant.)	
)	

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Thomas Neville, District Judge.

Conviction for first-degree murder, kidnapping, robbery and rape affirmed.
Sentence of death on post-conviction vacated and remanded.

Molly J. Huskey, State Appellate Public Defender, Boise, for appellant. Paula May Swensen, Deputy State Appellate Public Defender argued.

Hon. Lawrence G. Wasden, Attorney General, Boise, for respondent. Lanny Lamont Anderson, Deputy Attorney General argued.

In a unanimous opinion, the Idaho Supreme Court upheld Darrell Payne's conviction for first-degree murder, rape, robbery and kidnapping, but remanded the case to the district court for resentencing before a different district judge.

On July 6, 2000, Darrell Payne abducted Samantha Maher from Julia Davis Park in Boise. Payne approached Maher carrying a handgun and forced Maher into the front seat of her car. He handcuffed her wrists and drove her car to an unknown location. Payne raped Maher and then shot her in the back of her head. Payne disposed of her body by dumping it in a drainage tank on his property near Nampa, Idaho. He then drove to the Oregon coast and on to Eugene, Oregon the next day. Payne surrendered to the Eugene police on July, 8, 2000. Because it was possible that Payne had overdosed on aspirin, paramedics transported him to Sacred Heart Hospital. At the hospital, Payne told a detective that Maher was no longer alive and that her body was in a tank behind the barn at his home. In Idaho, officers responded to the Payne residence. Maher was floating face down with a plastic bag over her head in a septic tank.

Payne was charged with premeditated first-degree murder, or alternatively felony-murder, first-degree kidnapping, robbery and rape. Payne filed numerous pre-trial motions, including a motion to suppress, which was denied. Payne also filed a notice to rely on mental health evidence. He was then examined by two expert witnesses for the State. His trial commenced on September 17, 2001. A jury found Payne guilty of premeditated first-degree murder, first-degree kidnapping, robbery and rape.

The district court proceeded to sentence Payne pursuant to Idaho's former death penalty statute, I.C. § 19-2515 (2000). The court held a three-day sentencing hearing, consisting of a full day of victim impact statements and two days of testimony. The district court issued its findings as to mitigating and aggravating factors, and sentenced Payne to death for the murder of Maher on May 31, 2002.

Payne then filed for post-conviction relief. After oral argument on his petition, the district court granted the State's motion for summary dismissal of Payne's claims as to all issues except his sentence. The district court granted Payne's petition as to his sentence, concluding that Payne's death sentence violated *Ring v. Arizona*, 536 U.S. 584 (2002), and that he must be resentenced by a jury.

Discussing first Payne's arguments as to the guilt-phase of his trial, the Idaho Supreme Court determined that the district court had correctly denied his motion to suppress statements Payne made to Eugene police officers while at the hospital in Eugene. It also determined that his trial counsel was not ineffective for failing to suppress an eye-witness identification, for failing to suppress letters Payne wrote and left in the Eugene motel room, or for failing to object to the State telling the jury to use their knowledge of firearms during its deliberations. Finally, the Court determined that the State had not engaged in prosecutorial misconduct during the course of Payne's trial by exploring whether he intended to commit suicide by taking aspirin in Eugene. The Court also held that Payne had had a meaningful opportunity to develop his post-conviction claims, and that Idaho Code § 19-2719 (imposing a forty-two day time limit for filing post-conviction claims in capital cases) is not unconstitutional.

The Idaho Supreme Court then discussed Payne's arguments relating to the sentencing-phase trial. It found first that the district court had applied an overly restrictive, and therefore constitutionally impermissible, definition of mitigation. However, this error was harmless because of the overwhelming evidence presented at trial and at sentencing. The Court then

determined that Idaho Code § 18-207 did not violate Payne's Eighth Amendment right to present mitigation evidence, and that Idaho can constitutionally condition a capital defendant's right to present mental health evidence on the waiver of his *Miranda* rights. Following the Supreme Court of the United States, the Idaho Supreme Court determined that the victim impact evidence presented was unconstitutional pursuant to *Payne v. Tennessee*, 501 U.S. 808 (1991), as the witnesses commented on Payne's personal characteristics and the appropriate sentence. The Court determined this error was not harmless and necessitates a new sentencing hearing. It also determined that the Idaho legislature limited the admission of victim impact statements to the victim of the crime and members of the victim's immediate family members. I.C. § 19-5306(3).

Finally, the Court also determined that Payne's counsel during the sentencing hearing were not ineffective for following a district court order requiring Payne to submit to an examination by the State's mental health experts and was not ineffective in the presentation of mitigation evidence.

As to the State's cross-appeal, the Idaho Supreme Court held the trial jury's unanimous finding that Payne committed premeditated first-degree murder and that Payne committed the murder in the course of rape, robbery and kidnapping satisfied the constitutional requirement that a jury determine the existence of statutory aggravating circumstances, as set out by the Supreme Court of the United States in *Ring v. Arizona*, 536 U.S. 584 (2002). Therefore, it is constitutionally permissible for Payne to be resentenced by a district judge on remand.